

## Alcohol and Tobacco Tax and Trade Bureau, Treasury

## § 11.31

of this part by TTB Order 1135.11, Delegation of the Administrator's Authorities in 27 CFR Part 11, Consignment Sales.

*Exchange.* The transfer of distilled spirits, wine, or malt beverages from a trade buyer to an industry member with other products taken as a replacement.

*Industry member.* Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler or warehouseman and bottler, of distilled spirits.

*Product.* Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

*Retailer.* Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

*Return.* The transfer of distilled spirits, wine, or malt beverages from a trade buyer to the industry member from whom purchased, for cash or credit.

*Trade buyer.* Any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

[T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20427, Apr. 26, 1995; T.D. ATF-428, 65 FR 52021, Aug. 28, 2000; T.D. TTB-44, 71 FR 16924, Apr. 4, 2006]

### Subpart C—Unlawful Sales Arrangements

#### § 11.21 General.

It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Trans-

actions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

#### § 11.22 Consignment sales.

Consignment sales are arrangements wherein the trade buyer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer.

#### § 11.23 Sales conditioned on the acquisition of other products.

(a) *General.* A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry member from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) *Exchange.* The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of "other" products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

#### § 11.24 Other than a bona fide sale.

"Other than a bona fide sale" includes, but is not limited to, sales in connection with which the industry member purchases or rents the display, shelf, storage or warehouse space to be occupied by such products at premises owned or controlled by the retailer.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

### Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

#### § 11.31 General.

(a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer to sell, or contract to sell products with the privilege of return for any reason, other than those considered to be "ordinary and usual commercial

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reasons” arising after the product has been sold. Sections 11.32 through 11.39 specify what are considered “ordinary and usual commercial reasons” for the return of products, and outline the conditions and limitations for such returns.

(b) An industry member is under no obligation to accept the return of products for the reasons listed in §§11.32 through 11.39.

### **EXCHANGES AND RETURNS FOR ORDINARY AND USUAL COMMERCIAL REASONS**

#### **§ 11.32 Defective products.**

Products which are unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

#### **§ 11.33 Error in products delivered.**

Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

#### **§ 11.34 Products which may no longer be lawfully sold.**

Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.

[T.D. ATF-364, 60 FR 20428, Apr. 26, 1995]

#### **§ 11.35 Termination of business.**

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see § 11.39).

[T.D. ATF-364, 60 FR 20428, Apr. 26, 1995]

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#### **§ 11.36 Termination of franchise.**

When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

#### **§ 11.37 Change in product.**

A trade buyer's inventory of a product which has been changed in formula, proof, label or container (subject to §11.46) may be exchanged for equal quantities of the new version of that product.

#### **§ 11.38 Discontinued products.**

When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

#### **§ 11.39 Seasonal dealers.**

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

### **EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL**

#### **§ 11.45 Overstocked and slow-moving products.**

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for “ordinary and usual commercial reasons.”

#### **§ 11.46 Seasonal products.**

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for “ordinary and usual commercial reasons.”